

1952.

File No. O. Local Bds/52



P 64F

Legal Dept

A BRANCH

Subject:— Opinions under the Bombay

Local Boards Act, 1923

File No. O. Local Boards/52

Gen. 194 e.

207-A

Legal Department File No. 0. Local Boards/1953.

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SCD...
 22/8/1956.
 5 Copies.

LEGAL DEPARTMENT

The L.S.G. & P.N.D. considers that under section 20(1)(1) of the Bombay Village Panchayats Act, 1933, it is an obligatory duty of a village panchayat to make reasonable provision within the village for providing, maintaining and regulating burning and burial grounds, but such duty devolves on it "so far as the village funds at its disposal will allow". The Collector of Ahmednagar, however, states that financially the position of the village panchayat, Shirdi, is not sound and, therefore, it is not possible for that panchayat to provide a large sum for acquisition of land for burial and cremation purposes. The question for B.L.A.'s consideration is whether in the event of the failure of the village panchayat on account of financial difficulties, to provide for the same the District Local Board can be asked to make such provision.

Sub-section (3) of section 4 of the Bombay Local Boards Act, 1923, provides that a district local board shall have authority for the purposes of this Act over the area for which it has been established except such portion thereof as is for the time being within the limits of a municipal district or cantonment. It is clear from this provision that for the purposes of the Bombay Local Boards Act, a district local board has authority over the areas for which village panchayats have been established in the district. The obligatory and discretionary duties to be performed by a district local are specified in clauses (a) to (h) and (i) to (c) respectively of section 50 of the Bombay Local Boards Act. There is no specific provision in section 50 on the lines of section 20(1)(1) of the Bombay Village Panchayats Act, 1933, which makes it obligatory upon a district local board to make provision for burial and burning grounds. It would, however, be within the discretion of the district local board to make such provision under clause (n) of

section 50 within the limits of the village panchayat whose financial condition is not sound to make make such provision under section 26(1)(i) of the Bombay Village Panchayats Act, 1933.

12/-

6/1

Additional Secretary to Government.

U.R. to R.D. No. 218, dated the 9th January 1952

SSD. . .
13.8.56.
4 Copies.

Office of the R.L.A.

Under rule 8 of the Bombay Local Boards Election Rules, 1932, as it stands no fee can be charged for the supply of any nomination forms. If it is intended to charge any fee, the rule will have to be amended.

10/-

2/2

Remembrancer of Legal Affairs.

P.B. to L.S.G. & P.H.D., No. 1728, dated the 2nd

February 1952.

SSD. . .
13.8.56.
4 Copies.

Office of the R.E.A.

Under item 60 in List II in the Seventh Schedule to the Constitution taxes on professions, trades, callings and employments can be levied; and these taxes can be levied also by a district local board (see section 98 of the Bombay District Local Boards Act, 1923). The pith and substance of the tax levied by the Nasik District Local Board under rule 3 has to be considered, and it can be said to cover employment private or public. Consequently Government servants in the area would be liable to pay the tax.

14/-

8/3

Remembrancer of Legal Affairs.

U.R. to P.V.D. No. 2103, dated the 9th February, 1952.

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Legal Department.

The view taken by Local Self Government & Public Health Department is not correct.

2. It is true, as stated by Local Self Government and Public Health Department that sub-section (7) of section 13 of the Bombay Local Boards Act, 1933, provides that the Collector's decision under this section shall be final and conclusive and that sub-section (2) of section 14 of the Act provides that every person whose name is in the revised list last published before the date of any election for any constituency shall be qualified to vote and every person whose name is not in such list shall not be qualified to vote etc. In an election under the Bombay Village Panchayats Act, 1933, where a voters' list was not prepared wardwise, as required by the rules made under the Act, and the rules provided for the finality of a voters list, the B.L.A. in his opinion No. 13362 dated the 20th September 1950 observed as follows :-

"In the present case, admittedly the voters' list was not prepared wardwise which clearly in contravention of Rule 3(2) of the Bombay Village Panchayats Election Rules, 1948. When the electoral roll was not prepared wardwise, it is not understood how the elections at all were held. Prima facie, therefore, the election itself was entirely void. Although this kind of irregularity which vitiates the whole election may not be strictly covered by section 9(1) of the Bombay Village Panchayats Act, such election, being ab initio void, cannot be allowed to stand and on the principle that an act which is illegal or void need not be declared as such and can be ignored, the election in the present case could be considered as no election at all and ignored."

The above opinion would apply to the present case with greater force. The Collector of Enira in his letter No. L.F. 12, dated 11th February 1953 has admitted that the list of voters was prepared with reference to the qualification laid down in old section 15(3) of the Act. This section was entirely substituted by the Dugbay Local Boards (Amendment) Act, 1947, and it was provided under section 2(3) of the said Act that the provisions of the said substituted section shall have effect for the purpose of the general elections held not less than six months next after the date of the commencement of the Amending Act and for all subsequent elections. The old section is not therefore available for the ensuing general election. The old section 15 has in effect been completely repealed and now section 15 containing new qualification for being enrolled as a voter has been enacted. In spite of its repeal, the Collector states that the voters' list was prepared under the provisions which are not on the statute book. The voters' list stated to be first published is therefore ab initio void and cannot be allowed to stand. In this case Government may resort to the provisions of section 132 of the Act and ask the Collector to prepare a new voters' list under the substituted section 15 of the Act.

3. As regards the request of the Collector to extend the term of the present Board upto the 31st July 1953, the question may be decided by the Local Self Government and Public Health Department, having regard to the provisions of section 131-A(3) of the Act which provides that the members of a local board reconstituted under sub-section (2) shall hold office for a period not exceeding three years.

14/-

Additional Secretary to Government.

V.A. to L.S.G. & P.H.D. No. 2468, dated, 14th February 1953.

Local Department.

The view taken by the Director of the Local Self-Government Institute at page 1 ante is not correct. Section 39 of the Bombay Local Boards Act, 1933, empowers a local board to appoint, inter alia, any member of the board to exercise the powers and perform the duties of the local board in respect of any purpose, subject to any limitations and provisions contained in rules made under section 133(c) or regulations made under section 35(1). Under this section it would be competent to the local board to delegate their functions to the President of the board subject, however, to rules made under section 133(c) or regulations made under section 35(1). Rule 1 of the rules made under clause (c) of section 133 of the Act, which delegates to the President certain powers subject to certain limitations, is, therefore, covered by section 39, read with clause (c) of section 133 of the Act and is, therefore, free from objection.

Id/-

30/2

Additional Secretary to Government.

U.R. to L.G.O. And P.H.D. No. 2300, dated the 20th

February 1953.

SSD.
13.8.53.
4 Copies.

Legal Department.

It is no doubt true that section 3(d) of the Bombay Local Boards Act, 1923 provides that words and expressions used in the Act, but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879. The expression 'year' has not been defined in the Bombay Local Boards Act, 1923, but has been defined in the Code as meaning a revenue year i.e. ending 31st July. But the provisions of section 3 of the Bombay Local Boards Act which contain definitions are to be interpreted subject to the context i.e. the definitions or the rules of interpretation are to be followed, unless there is nothing repugnant in the context in which they are used. In the Bombay General Clauses Act, the word 'year' ~~has been defined as meaning the British Calendar Year.~~ ~~which~~ is defined as meaning the British Calendar Year. The context in which the word 'year' has been used in section 15(1)(b) and (2) shows that the expression is used as meaning the British Calendar Year and not as the revenue year in which sense the word has been used in the Bombay Land Revenue Code. The word 'year' occurs in conjunction with 31st August and would therefore imply that the Calendar Year is meant and not the revenue year.

Id/-

20/2
Additional Secretary to Government.

P.R. to L.S.G. and P.N.D. No. 2600, dated the 20th

February 1932.

Office of the R.L.A.

Bombay District Local
Boards Act, 1923.

Baroda Prant Panchayat
Act, 1949.

Section 76.

Government contribu-
tion — under.

Section 76 of the Baroda Prant Panchayat Act, 1949, provided that "a sum equal to the annual income of the Prant Panchayat, excluding Government contribution, shall be paid to the Prant Panchayat as Government contribution." That Act came into operation in Baroda State on 10-2-1949. The Administration of Baroda State Order came into force on the first day of May 1949 and the Baroda State (Application of Laws) Order, 1949, was applied with effect from 30th July 1949. The District Local Board, Baroda, is claiming the amount due to it under section 76 of the Baroda Prant Panchayat Act, 1949. P. & S.D. has suggested that there would be no objection to the payment of a sum equal to the annual income of the Prant Panchayat for the period from 30-2-1949 upto 29-7-49 only and not thereafter. The R.L.A. is requested to advise whether the claim of the District Local Board, Baroda is valid.

The Baroda Prant Panchayat Act, 1949, was repealed by the Baroda State (Application of Laws) Order, 1949, with effect from 30th July 1949 and the Bombay District Local Boards Act, 1923, was applied, which Act contains no provision similar to section 76 of the Baroda Prant Panchayat Act. Sub-clause (iii) (a) of clause 3 of the Baroda State (Application of Laws) Order, 1949, provides that the repeal by this order of any such enactment, notification, scheme, rule, by-law or order shall not affect the validity, invalidity, effect or consequence of anything already done or suffered or any right, title, obligation or liability already

acquired, assumed or incurred, or any remedy or
 proceeding in respect thereof, or any release or
 discharge of or from any debt, penalty, obligation
 liability, claim or demand, or any indemnity already
 granted or the proof of any past act or thing. Under
 this provision the liability of Government to pay
 under section 73 of the repealed Daroda Grant.
 Panchayat Act, 1936, is saved. Consequently, Govern-
 ment will have to pay an amount equal to the annual income
 of the Grant Panchayat for the period from 10-2-49
 upto 25-7-49. The view taken by the P. & S.D. is
 correct. The general principle enunciated in *Secretary to State v. Rajani* (42 Indian Appeals - 229)
 in respect of the effect of change of sovereignty
 would not apply to the present case as the liability
 was imposed on Government under a statutory provision
 and was continued by the Daroda State (Application of
 Laws) Order, 1948.

16/-
 7/3

Secretary of Legal Affairs.

U.S. to L.S.O. & P.S.D. No. 3713, dated the 10th March

1952

SSB.
 10.8.50. do.

Legal Department.

It appears that the voters' list for Sabarkantha Local Board elections was provisionally published in December 1951 and finally published on 25th February 1952. In this list, the names of persons who had attained the age of 21 years on 31st August 1950 have been enrolled as required by section 15(1)(b) of the Bombay Local Boards Act, 1923. The programme for the first general elections which were to be held in May 1952 has not been published and it is proposed to postpone the elections to December 1952. The question for consideration is whether in view of the postponement of the date of elections it is necessary to revise the lists further in order to enrol voters attaining the age of 21 years on 31st August 1951.

3. It is true that under section 11(3) of the Bombay Local Boards Act, 1923, there is an obligation on the Collector to prepare a list of voters whenever a date has been fixed for any election of persons to fill places of persons whose terms of office has expired and that there is no specific provision in the Act on the lines of the proviso to section 13(1) of the Bombay Municipal Corporations Act, 1925 or section 24(3) of the Representation of the People Act, 1950 (XLIII of 1950) that if for any reason fresh roll is not prepared the old roll will continue in operation till the publication of the fresh roll. But in this case, the elections are being held for the first time and the list of voters has validly been prepared as required by section 15(1)(b) and other provisions of the Act and finally published. No provision of the Act requires that the list of voters shall be prepared in the same year in which elections are held. Section

13(2) lays down that ~~at~~ the provisional publication of the list of voters should be ~~at~~ made at least three months before the date fixed elections but there is no objection to making the provisional publication earlier, e.g. one year before such date. Under section 14 only those persons whose names are entered in the final list are entitled to vote and to be elected. As pointed out in H.L.A.'s opinion No. 20410 dated 21-12-61, the final publication of voters' list is quite independent of other stages of the elections. The ~~the~~ elections if held in December 1962 cannot be successfully challenged merely on the ground that the voters' list was not revised. There appears therefore no legal objection to holding the ~~the~~ elections in December 1962 without revising the voters' list finally published on 25th February 1962.

3. To leave no scope for contention, the Department may, however, take earliest opportunity to insert in the Local Boards Act a provision on the lines of the proviso to section 13(1) of the Municipal Boroughs Act.

Id/-

25/3

Additional Secretary to Government.

O.B. to L.B.C. & P.N.D. No. 4503, dated the 25th March

1962.

S.D.
10.8.66.
4 Copies.

LEGAL DEPARTMENT.

The replies suggested by the L.S.G. & P.H.D. to points 1 and 2 are in order.

3. Reply to point 3 - Rule 33 provides that any person on duty at a polling station at which he is not entitled to vote, may, if he is entitled to vote at any other polling station for the election, on production of a certificate from the Returning Officer of the constituency for which he is entitled to vote together with a ballot paper (both foil and counterfoil) of such constituency, in the form prescribed in Schedule II record his vote at the polling station at which he is on duty. Sub-rule (2) of the said rule 33 provides that all such ballot papers shall be placed in an envelope and sealed by the presiding officer and returned with the certificate referred to in sub-rule (1) to the Returning Officer who granted the same for inclusion among the valid voting papers. It is thus clear that the counterfoil and the outerfoil are not to be separated by the Presiding Officer but are to be sent in a sealed envelope to the Returning Officer who is to count them along with other ballot papers. There is no provision on the lines of rule 33(5) of the Assembly Rules, that the Returning Officer is to collect counter foils and is to seal them up.

Point 4 - In view of what is stated against point 3 the point 4 raised by the Collector does not survive.

Point 5 - There is no rule corresponding to rule 37 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 providing for the period before which persons employed on duty at polling stations are to apply for ballot papers. In the absence of such a rule the issue of ballot papers to such persons will be governed by rule 33 and they will have to be issued to them on the day fixed for the recording of votes.

Id/-

For Additional Secretary to Government.

U.R. to L.S.G. and P.H.D. No. 4629, dated the 27th March 1952.

SND.

16.8.56. 40

OFFICE OF THE R.L.A.

Seen and returned.

2. As advised by the R.L.A. in his opinion No. 8962, dated 29th June 1930, the L.S.G. & P.H.D. should instruct the Collector to enforce the claim for the local fund case only against the Talukdar and not against the Saurashtra Government.

Id/-

17/4

Remembrancer of Legal Affairs.

C.R. to L.S.G. & P.H.D. No. 5732, dated the 17th April 1932.

SSD.
10.8.50.
4 Copies

Local Department.

The facts of the case are that a nomination paper was filed by Shrimati Radhabai Kaka Parit in the prescribed form and within the prescribed time on 17th March 1952. 19th March 1952 was fixed as the date for the scrutiny of the nomination papers. The Returning Officer on the said date scrutinised the nomination paper and rejected it on the ground that it was not signed by the seconder as required by sub-rule (3) of rule 9 of the Bombay Local Boards Election Rules, 1932. Against the order of rejection an appeal was made to the Collector, Satara South. The Collector thinks that only because the seconder has not put in his signature on the nomination paper, it cannot be said that he has not subscribed the nomination paper, and as in his opinion the mistake is too technical, he directed that the nomination paper should be accepted and her name be entered in the list of validly nominated candidates. The R.L.A. is requested to advise whether the order issued by the Collector in appeal is legally in order; and whether it should be set aside by Government under section 133 of the Bombay Local Boards Act.

3. Sub-rule (3) of rule 9 of the Bombay Local Boards Election Rules, 1932, provides that a nomination paper so delivered shall be subscribed by the candidate himself as assenting to the nomination and the two persons as proposer and seconder. Sub-rule (4) of the said rule provides that on receipt of a nomination paper the Returning Officer shall, then and there, ascertain from the proposer and seconder whether they have willingly signed it. If the Returning Officer is satisfied that either of them have not signed willingly, he shall reject the nomination paper and record thereon his reasons for rejecting it. If a nomination paper is rejected under

this sub-rule the candidate may deliver a fresh ~~nomination~~ nomination paper subject to all the conditions of this rule. It appears from the Order of the Collector, Satara South, that the Returning Officer has, as required under sub-rule (4) of rule 9, ascertained from the proposer and seconder that they have signed the nomination paper willingly. The nomination paper was not rejected by the Rejecting Officer, then as he was satisfied that they have signed the nomination paper willingly. On the day of the scrutiny of the nomination papers the nomination paper was rejected by the Returning Officer on the ground that it was not signed by a seconder as required by sub-rule (3) of rule 9 of the said rules. Apart from the provisions of sub-rule (4) of rule 9, rule 12 in specific language provides that the Returning Officer shall give the candidates, their election agents, if any, one seconder and one proposer of each candidate, all reasonable facilities for examining the nomination papers of all candidates which have been delivered at or before the day fixed under rule 9 and in the manner prescribed in rule 9. As sub-rule (3) of rule 9 provides that a nomination paper so delivered shall be subscribed by the candidate himself as assenting to the nomination and by any two persons as proposer and seconder, it was open to any ~~xxx~~ candidate to challenge that the nomination paper delivered did not comply with the provisions of sub-rule (3) of ~~xx~~ rule 9, ~~xxxxxxxxxxxxxx~~ Except for the reasons specified in sub-rule (4) of rule 9, the Returning Officer ~~xx~~ has no authority to make any alterations or amendments in the nomination paper delivered by a candidate. He has to accept the nomination paper delivered to him under rule 9, then again to satisfy himself as required by sub-rule (4) of rule 9 and then to scrutinise the nomination paper as required by rule 12. The Returning Officer has no authority ~~under~~ sub-rule (4) of rule 9 to

reject the nomination paper at that stage on the ground that it is not signed by a seconder. It is for the candidates to point out & this defect under rule 13 of the said rules. The object of sub-rule (4) of rule 9 is not to enable the party to cure any defect in the nomination paper after it is delivered except the one specified therein. The view taken by the Collector that the omission to sign the nomination paper by a seconder is too technical is not correct, as the provisions of sub-rule (3) of rule 9 in specific terms provide that a nomination paper shall be subscribed by a seconder. "subscribe" means to write one's name at foot, to sign, document, note, etc. It is admitted in this case that the seconder has not signed his name. The satisfaction of the Returning Officer that the seconder has willingly signed the nomination paper would not cure this defect in the nomination paper itself. In this case, however, the Collector has already passed orders in appeal under rule 15, that the nomination paper of Shrimati Ramabai Kaka Parit should be accepted and that her name be entered in the list of validly nominated candidates. This order of the Collector would stand under the said rule 15. If any party has any grievance against this order, the only remedy is to apply to the District Judge of the district within fifteen days after the date of the declaration of the result of the election. The provisions of section 133 of the Local Boards Act would not apply to an order made by the Collector under rule 15 of the Bombay Local Boards Election Rules, 1932 as a specific remedy is provided under section 19 of the Act. Government cannot, therefore, interfere with the Collector's order and they should leave the parties to challenge the validity of the election under section

of the Act.

16/-

19/4

Additional Secretary to Government.

to L.S.D. & P.H.D. No. 5083 dated 19th April

1952.

807.
10.2.50.
4 Copies.

LEGAL DEPARTMENT

The view taken by L.S.O. & P.H.D. is correct.

2. In the Rules, the words "voting paper" and "ballot paper" have been used as synonyms. It is clear from the provisions of rules 33, 33A and Schedule VI that only valid ballot papers are counted and rejected ballot papers are not to be counted. For the purposes of rule 10(3) therefore, rejected ballot papers are not to be taken into consideration as they cannot be said to be counted.

10/- T...

2/5

Additional Secretary to Government.

U.O. to L.S.O. & P.H.D. No, 6084, dated the 3rd May 1952.

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R.L.A.'s opinion No. 16483, dated 6.11.1950, related to the suspension and remission of the cess. It has no application to the present case which causes the writing off of irrecoverable amount of the local fund cess. That can be done under rule (23) framed under clause (h) of section 133 of the Bombay Local Boards Act, 1923 (Dom.VI of 1923). The facts of the case show that clause (1A) of rule (23) will not be applicable. — Therefore, the proper course in this case would be for the Director of Local Authorities to write off the local fund cess in question under clause (1) of rule (33).

Id/-

8/5

Remembrancer of Legal Affairs.

P.D. to L.S.G. & P.S.D. No. 7577, dated 9th May 1952.

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Bombay Local Boards
Act, 1933.
Section 15.

Voters List prepared
on the basis of
taxation qualification.

The R.L.A.'s opinion No. 4943 dated 31-3-1952 is distinguishable because in that case the names of persons not qualified were put on the Roll through mistake, but in the present case the Collector of West Khandesh has admitted that the lists of voters published on 25-12-1951 were with reference to the taxation qualification as laid down in the old section 15(1) of the Bombay Local Boards Act. The old section 15 has been completely repealed and new section 15 containing new qualifications for being enrolled as a voter has been enacted. The voters lists stated to be first published on 25-12-1951 would, therefore, be ab initio void and cannot be allowed to stand. The fact that opportunity was given to persons claiming to get themselves enrolled would not cure the initial invalidity of the ~~xxx~~ voters lists. Government may, therefore, resort to the provisions of section 133 of the Act and direct the Collector to prepare a new voters' list under the substituted section 15 ~~and~~ (cf. Additional Secretary's opinion No. 2469 dated 14-2-1952).

16/-
 21/4

Remembrancer of Legal Affairs.

U.O. to L.S.D. & P.L.D. No. 6081, dated the 22th

April 1952.

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Section 50(m-i) has no relevance to the question in issue. In the first place that section is not intended for the purpose of making compassionate payments either by way of gratuity or allowances to the survivors of deceased employees. In the second place this latter kind of payment is specifically provided for by clause (f) of section 123 which would exclude the operation of the general provision ~~in~~ in section 50(m-i). The case must, therefore, be governed by clause (g) of section 123 which authorizes the Local Board to frame regulations determining the conditions under which gratuities or compassionate allowances. The wording of clause (f) shows that in respect of the survivors it does not permit the grant of a pension as such but merely a gratuity or compassionate allowance. That is the distinction which the provision makes between officers and their survivors. No doubt a compassionate allowance means a voluntary bounty given on account of circumstances which evoke sympathy. An allowance can be a recurring payment, unlike a gratuity which is a lump payment. Although, therefore, clause (f) makes a distinction between pension on the one hand which is permissible only in the case of officers and gratuity and compassionate allowances, it would be competent to the Board to make a payment or to Shrinath Pradhan of a recurring nature by way of a compassionate allowance. However, for that purpose it would be necessary for the Board to frame regulations.

13/-

24/4

Comptroller of Local Affairs,

U.R. to L.O.O. & P.O.O. No. 3373, dated the 25th April 1952.

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At its meeting held on 8th September 1951, the District Local Board, Dharwar, resolved to contribute a sum of Rs. 1100/- towards the establishment of a District Museum at Dharwar and has approached the Director of Local Authorities, Southern Division, for sanction under section 77 of the Bombay Local Boards Act, 1923. The Director of Local Authorities, Southern Division, considers that the provisions of section 50(b) of the Bombay Local Boards Act, 1923, are analogous to the provisions of section 71(b) of the Bombay Municipal Corporation Act, 1938, and consequently in view of R.L.A.'s opinion No. 7720 dated 10th May 1951 the District Local Board, Dharwar, cannot ^{contribute} ~~contribute~~ any amount towards the establishment of the museum by the District Museum Committee at Dharwar. R.L.A. is requested to advise.

2. The view expressed by the Director of Local Authorities, Southern Division is not correct for R.L.A.'s opinion No. 7720, dated 10th May 1951, is distinguishable and has no application to the present case. That opinion interpreted the provisions of sections 66 and 71 of the Bombay Municipal Corporation Act. While considering a similar question, the Advocate-General observed :-

" I agree that the construction of a museum building might well be an educational object within the meaning of section 50(1) of the Bombay Local Boards Act, and if the proposed building is located within the area of the District Local Board, the Board could make provision for that object, provided that the building is not within the limits of a Municipality. If it is within a municipality, then the District Local Board can only act

within the limits of section 77 of the Bombay Local Boards Act, etc. " (See Advocate-General's Opinion No. 6 dated 3-5-1956).

Since the District Museum is to be established at Farwar, that is within the limits of Bharwar Municipality, under section 77 of the Bombay Local Boards Act, it would be open to the District Local Board to contribute the amount of Rs. 1100/- to the District Museum Committee with the sanction of the Director of Local Authorities, Southern Division.

16/-

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Remembrancer of Legal Affairs.

U.N. to L.S.G. & P.N.D., No. 7290, dated the 28th May 1956

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Section 74(3) of the Bombay Local Boards Act, 1923, reads as follows:-

"The local fund shall be kept in the Government treasury or in the bank to which Government treasury business has been entrusted or in such other bank or co-operative society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, as may be approved by the State Government."

What is registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925, governs both the preceding words "bank" and "co-operative society". This interpretation finds further support from the fact that there is no comma after the word "bank". It was not the intention of this sub-section that the fund could be deposited in any bank other than that registered etc. as may be approved by the State Government. Since Government now propose to permit District Local Boards to deposit their funds in Scheduled Banks, a suitable amendment of this sub-section would be necessary.

18/- P.M.L.

19/-

Remembrancer of Legal Affairs.

O.R. to L.L.A. & P.M.D. No. 8422, dated 20th

May 1952.

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As a rule, election laws confer specifically upon the Presiding Officer the power to adjourn a poll till the following day in case of natural calamities and such like contingencies. The Local Board Election Rules do not make any provision for this purpose. Moreover, in this case the Presiding Officer is reported to have closed the poll and not to have adjourned the poll. In the absence of a specific power and in view of the course adopted by the Presiding Officer, the only remedy now open is for the Collector to fix a date for fresh poll for this particular polling station. That can be done under rule 6 which gives the Collector the power to fix the date and hour for the recording of votes at the polling stations. Normally, the date should be the same for all polling stations in the same constituency; but it would be legally feasible for the Collector to fix different dates owing to circumstances which were not anticipated and which it was not possible to control. The best course in the circumstances, therefore, is to invite the Collector to fix another date for a fresh poll at this particular polling station No. 40. Consequently, the date for counting of votes will also have to be changed as proposed by the Collector. Government may, therefore, give sanction to the Collector for the proposed changes under clause (3) of rule 6.

2. The N.L.A. would like to add that in all election laws connected with Local Authorities provision for the purpose of adjourning a poll in well-recognized circumstances should be got made

by suitably amending the Rules.

18/-

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Remembrancer of Legal Affairs.

U.S. to L.S.G. & P.N.N. No. 6496 dated 20-4-1953.

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**Mistakes in the
Electoral Roll**

**Bombay Local
Boards Act, 1923
Section 14**

**R.L.A.'s opinion
No. 4261 dt.
18.4.1939.**

**Addl. Secy's
opinion No.
2468 dt.
14.2.32.**

In R.L.A.'s opinion No. 4261 dated the 18th April 1939, it has been held that if there is any illegality in the final publication of the voters' list under -- section 14 of the Local Boards Act, 1923, it invalidates the final publication and that the Electoral Roll must be finally published again by following the prescribed procedure. A similar view has been taken in Additional Secretary's opinion No. 2468 dated the 14th February 1932. In the present case, however, there is no illegality in the publication (vide para 4 of the Collector's letter). The names of persons not qualified have been put on the Roll through mistake. This mistake does not invalidate the publication and the persons on the Roll will be entitled to vote at the election and also to stand for the election (vide sub-sections (2) and (3) of section 14 of the Act). "Mistakes in the Electoral Roll are none the less inevitable and people who have no right to vote do find their names in the register. The register is conclusive on the presiding officer; and he is not entitled to refuse to give a ballot paper to an elector whose name is on the register, even though such elector be wrongly on the register, or be prohibited from voting by statute." (Aiyanger's Law of Municipal Corporations pp. 40-41). The entries in the roll are final even as regards a returning officer at the time of nomination, or an election court of inquiry. They are precluded from enquiring into the question of the party's possession of the necessary qualification as a voter (North Bangalore case (1921) 1 I.E. p. 53). In view of this position the electoral roll finally published must be taken as conclusive and the persons on the roll have to be allowed to stand for the election and to vote.

Id/-

3i-3

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 4943, dated the 31st March
1952.

Office of the R.L.A.

Bombay Local
Boards Act, 1923.

R.L.A.'s Opinion
Nos. 8002 dated
the 20th June
1940 and 5732
dated 17th
April 1952.

The Saurashtra Government stands in the shoes of the Limbdi Durbar. The implication of taking over the liability by the Central Government as a political charge to pay the difference between Rs. 700 and the local fund cess recoverable from the Limbdi Durbar was the recognition of the Durbar's full liability under the Bombay Local Board Act notwithstanding the agreement. After the lapse of paramountcy the Central Government discontinued the payment with the result that the Limbdi Durbar became liable to pay the full amount of cess leviable under the Bombay Local Board Act. Besides, the levy of the full amount of cess is a liability imposed on the Bombay Government under the Act and such levy is for the benefit of the district local board. Consequently the Saurashtra Government and if it persists in its refusal, the question may be referred to the council which informally decides questions of common interest between Bombay and Saurashtra.

Id/-
23/6/52.

Memorandum of Legal Affairs.

U.R. to L.S.G. & P.N.D. No. 104336, dated the 23rd

June 1952

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OFFICE OF THE R.J.A.

Bombay District
Local Boards
Act, 1923:
sec.50(1).

Construction
of Hostels.

"Hostels are erected and maintained by the Collores as part of the general educational scheme of the country and the object of the hostel is the advancement of learning". (see *Monie v. Scott*, 20 Bom. L.R. 2, 839 at page 849). The construction of hostel buildings for accommodating students receiving secondary education therefore, might well be considered as an educational object within the meaning of section 50(1) of the Bombay Local Boards Act, 1923 and it would be competent for the District Local Board, Satara North to make provision for the object provided that the buildings are to be constructed in the area of the district local board. If however such hostels are to be constructed outside such area i.e. within the municipal limits, the board can do so only within the limitations of section 77 of the Act (see R.J.A.'s opinion No. 7290, dated the 8th May 1952).

14/-

27/6

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.J.D. No. 10732, dated the 28th June 1952.

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Office of the R.L.A.

Government
property -
Exemption from
the levy of
octroi by local
bodies.

Para 1 of the draft circular at p.53 ante, as slightly amended is in order. The following remarks are made in respect of para 2.

2. As regards the levy of and exemption from octroi duty by village panchayats the relevant rules are contained in Part IV of the Bombay Village Panchayats Taxes and Fees Rules, made under clause (m) of section 108(1) of the Bombay Village Panchayats Act, 1933. Under Note 1 of these Rules in that Part, all Government stores or stores of ~~such~~ local bodies (for local fund purposes) shall be exempt from the payment of octroi duty. In this connection attention is invited to R.L.'s opinion No. 115-Conf., dated the 5th February 1951 and Additional Secretary's opinion No. 8866, dated the 6th ~~June~~ June 1951. The Government stores such as iron, steel etc. would be exempt from the octroi duty, whether or not they are used for public purposes and not used or intended to be used for purposes of profit. Consequently, octroi rules of the Village Panchayats may be amended providing for exemption to Government stores on the production of a certificate to the effect that the stores are Government stores.

3. Under the proviso to section 99 of the Bombay Local Boards Act, 1923, no octroi is leviable in respect of Government stores or any other Government property. Therefore, as in the cases of the octroi leviable by village panchayats the octroi rules of the local boards will have to be amended providing for exemption in respect of Government stores or any other Government property on the production of a certificate that the stores are the property of Government.

Id/-

1/7

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.N.D., No. 10075, dated the 2nd July 1952

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Office of the D.L.A.

Bombay Local
Boards Election
Rules, 1932 -
Rule 6.

Counting of votes
earlier than the
date fixed.

In this case an irregularity has been committed by the Mamlatdars of Sinnar and Malogaon who were appointed Returning Officers for the Sinnar and Malogaon Constituencies in the general elections recently held to the District Local Board ~~Masik~~ Masik in as much as they carried out the counting of votes in those constituencies on the 23rd May 1952 instead of on 29th May 1952 as fixed by the Collector of Masik under rule 6 of the Bombay Local Boards Election Rules, 1932. The Collector of Masik considers that the change in the date of counting of votes was a clear irregularity but not such as to materially affect the result of the election and that no action is now ~~now~~ necessary particularly as no objection has been raised in this connection. The D.L.A. is requested to advise and to state whether post facto sanction would be necessary to the change of date for the counting of votes with a view to condone the irregularity.

2. The view taken by the Collector of Masik appears to be correct. At Common Law an election ought not to be held void by reason of transgressions of law committed without any corrupt motive by the Returning Officer or his subordinates in the conduct of an election where the court is satisfied that the election was in substance conducted under the existing law and that the result i.e. the success of one candidate over the other, was not and could not have been affected by those transgressions. (Rogers on Elections : Vol. II 29th Edn. p. 41). In this case the election appears to have been conducted in accordance with the law and no corrupt motive can be attributed to the Returning Officers in holding of the count of votes some days earlier than the date fixed under rule 6 of the

Rules

Although admittedly an irregularity has been committed in this respect as stated by the Collector it is not such as would materially affect the result of the election; and in fact no body has so far challenged the election. In East Clare (1892) (May's Election Cases 161; 4 O'H. & H., 161) where the election was sought to be avoided inter alia on the ground that a Sunday had been included in the notice of the election it was held that the elections having been held substantially in accordance with the principles laid down by law, non-compliance or mistake did not affect the result of the election. In this case the question whether upon the discovery of the irregularity of the notice a fresh notice ~~my~~ could have been given was raised but not decided. Rogers however adds: "nothing, it would seem, could be ~~gained~~ under the circumstances by giving a fresh notice because it would also be irregular as being out of time. Upon either notice, therefore the same question would arise viz. whether the result of the election had been or might reasonably have been affected by the irregularity". (See Rogers on Election Vol. II pp.41-43). It would, therefore, appear that no post facto sanction of Government for effecting the change in the date of count would be called for and the matter may be allowed to rest at that.

Id/-

10/7

Remembrances of Legal Affairs.

U.N. to L.S.G. & P.J.D., No. 664-Conf., dated the 11th

July 1952.

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-3-

Local Board.

The proviso to sub-section (1) of section 4 of the Bombay Local Boards Act, 1923, provides that :
Provided that if the State Government is of the opinion that it is not expedient to establish a District Local Board for any local area, it may direct that all or any of the powers and duties which ~~are~~ are exercisable by or on behalf of a local board under this Act or any other law for the time being in force, shall in such area be exercised and performed by such person or persons as the State Government may from time to time appoint. In virtue of these provisions Government in the Local Self Government and Public Health Department has already issued order No. 6173/33, dated 8th February 1950 and under the proviso to sub-section (1) of section 4 of the said Act, directing that all the powers and duties which are exercisable by or on behalf of a District Local Board, Dangs, shall, in the said district be exercised and performed by the District Development Board, Dangs, the composition of which is specified in the said order. If it is now proposed that the members of the Local Development Committee to be appointed in Dangs should exercise all powers and duties which are exercisable by or on ~~behalf~~ behalf of a District Local Board, Dangs, it will be necessary to supersede the said Government Order and to issue in its place a fresh order. This should be done by Government under the proviso to ~~the~~ sub-section (1) of section 4 of the Act on the lines of the existing notification.

Id/-
23/6

Additional Secretary to Government.

1000 56.
40.

U.R. to L.S.G. & P.H.D., No. 10458, dated the 23rd June 1952.

Submitted.

2. It appears that the District Local Board, Panch Mahals has resolved to pay an amount of Rs.300/- to the Baroda Division Pustakalaya Mandal at Baroda and has requested the Director of Local Authorities, N.D. to sanction the expenditure under section 77 of the Bombay Local Boards Act, 1923. It is stated that the function of the Mandal is to foster the working of small libraries in the Baroda Division of Gujarat including the Panch Mahals district. The question raised for B.L.A.'s consideration is whether the D.L.B. Panch Mahals is competent to sanction the donation to the Baroda Division, Pustakalaya Mandal, Baroda, which is located outside its jurisdiction.

Office of the R.L.A.

Bombay Local Boards
Act, 1923

Section 77.

Contribution to the
Pustakalaya Mandal
Baroda by D.L.B.,
Panch Mahals.

R.L.A.'s opinion No. 2730 dated 13th February
1951 relied upon by the Collector is distinguishab-
le.

The view expressed by the Director of Local
Authorities, Northern Division, in his endorsement
No. L.F. 530, ~~22~~ dated 30th January 1952 is
correct (cf. R.L.A.'s opinion No. 7290, dated
8-5-53).

Id/-

22/5

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., No. 8718, dated the 24th
May 1952.

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Bom. Local Boards
Act, 1923
Section 47.

Bom. Municipal
Boroughs Act,
1925

Section 63(2)(f)

Under section 63 (2)(f) of the Bombay Municipal
Boroughs Act, 1925, all public streets not being
reserved by Government vest in and belong to the
Municipality. The words "reserved by Government" do
not mean only reservation by Government for itself but
may include reservation for another local body. The
portion of the Nagashettikop Road included within the
Havli Municipal limits by Government Notification,
General Department No. 3951/33, dated the 15th August
1945 which appears to be a public street as defined in
section 3(10) has not been reserved in favour of the
District Local Board, Dharwar. The effect of absence
of such reservation is that that road ceased to be under
the jurisdiction of the District Local Board, Dharwar
and its authority came to an end (see section 4(3) of
the Bombay Local Boards Act, 1923), and vested in the
Havli Municipality with effect from the date of the
notification. The prohibition on the transfer of
property contained in the proviso to section 47 of the
Bombay District Local Boards Act applies to a voluntary
transfer made by the District Local Board and has no
application to statutory transfer as in the present case.
No sanction is, therefore, necessary under that provision.
The view taken by the Under Secretary, Local Self
Government and Public Health Department is correct.

16/-
22/7

Remembrancer of Legal Affairs.

M.R. to L.S.G. & P.H.D., No. 12122, dated the 23rd July

1952.

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Bombay Local Boards
Act, 1923.Sections 50(n) and
77

Athletic Tournaments.

It appears that the District Local Board, Satara North by its Resolution No. 31 dated the 16th October 1951 has sanctioned a grant of Rs.1000/- for the athletic "tournaments" arranged by the Karad City Congress Committee held at Karad on the 11th, and 14th November 1951 and has requested the ~~Director~~ Director of Local Authorities to accord sanction to the expenditure under section 77 of the Bombay Local Boards Act, 1923. The question raised for R.L.A.'s consideration is whether expenditure towards the athletic tournaments would be covered under section 50(n) of the Act.

2. Athletic tournaments are contests in games of skill wherein the competitors play a series of selective games involving physical exercises such as running, leaping, boxing, wrestling etc. (See

Oxford English Dictionary : Vols. I and XI). There can be little doubt that indulgence in these organised games might reasonably be supposed to encourage physical development and efficiency of the public (see in re. *Marinette* (1915) 3 Ch.284 and In re. *Gray* (1925) 1 Ch. 362). Therefore a contribution towards the expenditure of an athletic tournament can be considered a measure likely to promote the health of the public of the district within the meaning of section 50(n) of the Bombay Local Boards Act, 1923 and it would be competent for the District Local Board, Satara North to make a grant of Rs. 1000/- to the athletic tournaments held at Karad with the sanction of the Director of Local Authorities under section 77 provided its fund permits.

Id/- 30/7

SSD.
20.8.56. 40.and
N.D. to L.S.A. & P.H.D. No. 12683 dated the 31st July 1

Office of the R.L.A.

The view taken by the Examiner, Local Fund Accounts, is correct. Rule 3 of the Pension Fund Rules of the Surat District Local Board which are to come into force with effect from 1-4-51 provides for giving an option to the employees of the Board to join the Pension Fund which with retrospective effect from the date of their joining the Provident Fund and for this purpose it is proposed to transfer the Board's contribution to the Provident Fund and interest thereon to the Pension Fund and to refund the employees' subscription with interest thereon to the employees concerned. As pointed out in R.L.A.'s opinion No. 10460 dated 2nd July 1951, the local board's contributions to the provident fund form part of the provident fund and it would be beyond the power of the District Local Board to reclaim any part of the fund as its contribution. Consequently, it would not be legally feasible to transfer to the pension fund the Board's contributions to the provident fund with interest thereon. Besides, the Pension Fund Rules are proposed to be brought into effect from 1-4-1951 and the option given to the employees to join the Pension Fund with retrospective effect from the date of their joining the Provident Fund would in effect amount to making the Pension Fund Rules retrospective from the date of the Provident Fund. As no subordinate legislation can be made retrospectively, such a provision as contained in rule 3 giving option to the employees to join the Pension Fund with retrospective effect, etc., would also be open to objection.

Id/- 18/8

Remembrancer of Legal Affairs.

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20.8.55. 40.

T.R. to L.G.O. & P.W.D. No. 13529, dated the 10th August 1952.

Office of the R.L.A.

Attention is invited to R.L.A.'s opinion No. 20431 dated 22-12-51, where the legal position of a District Building Committee is considered. As pointed out in that opinion, a District Building Committee is not a statutory body and it merely serves as an agent of Government for the construction of primary school buildings. But the control which has been given to the District School Board over the District Building Committee has it appears led to an anomalous legal position in respect of the contracts given by the Committee. The District Local Board President is an ~~ex-officio~~ ex-officio chairman of the District Building Committee and the construction of primary school buildings is supervised by the District Local Board Engineer and the District Local Board gets a centage charge for such supervision. It is, therefore, apparent that, though the contracts given by the District Building Committee for construction of school buildings may not be considered as work done by order of a local board or contract or employment with or or under or by or on behalf of the local board within the meaning of section 9(1)(e) of the Bombay Local Boards Act, 1923, still in view of the circumstances stated above, namely, the President being the ex-officio Chairman of the District Building Committee, the supervision by the District Local Board Engineer and the percentage charged by the District Local Board for such supervision, would required the District Local Board to treat these works as if they are their own work to be constructed. Otherwise, the supervision would be meaningless. Consequently, it appears that if a contract is given by the District Building Committee to a person who later on becomes a member of the District Local Board

the

the District Local Board may not be able to exercise an impartial supervision over his work and in that view there is bound to be a conflict between interest and duty, to avoid which the provision for the disability of a councillor under section 9(1) (e) is made. It would therefore, be proper to hold that such contractor would be disqualified under section 9(1) (e) of the Bombay Local Boards Act to become a member of the District Local Board. However, in view of the fact that such member has no proper notice of the possibility of a disability being incurred disentitling him to be a member of the District Local Board, an order may be passed to that effect and embodied in the pamphlet issued in respect of the construction of primary school buildings. If, after such order is passed and inserted in the leaflet, any contractor becomes a member of the District Local Board, he could be deemed to have proper notice of the legal position and could be disqualified.

Id/-

14/4

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.U.D., No. 13304, dated the 14th August 195

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20.8.53.
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In R.L.A.'s Opinion No. 7769 dated the 14th August 1948, it was held that where a Municipality maintains a park or garden or a public building, the erection of a statue would be permissible if it is intended primarily as a decoration of the park, garden or building and, therefore, falling within its reasonable maintenance, under section 56(b) of the Bombay District Municipal Act, 1901, or section 71(b) of the Bombay Municipal Boroughs Act, 1925, as the case may be. Section 71(b) of the Bombay Municipal Boroughs Act, 1925, provides for constructing, establishing, or maintaining public parks, gardens, libraries, museums, lunatic asylums, halls, offices, dharmashalas, rest-houses, homes for disabled and destitute persons and other public buildings. Section 50(b) of the Bombay Local Boards Act, 1923 provides for the construction and repair of hospitals, dispensaries, markets, dharmashalas and other public buildings and the visiting management and maintenance of these institutions. Apparently, there is a difference in the wording of these two provisions. The expression 'Other public buildings' in section 50(b) of the Bombay Local Boards Act, would ordinarily have included a District Local Board's office-building, but the words "the visiting, management and maintenance of these institutions" suggest that 'the other public buildings' are public buildings intended to be used as institutions. Consequently, the words "other public buildings" may have to be read ejusdem generis and may not include a District Local Board Office building.

- 2 -

building. However, the construction and maintenance of a District Local Board Office building is an inherent ~~and~~ right of a District Local Board, for, it cannot work without its own office. Besides, it is implied in section 48 of the said Act that every road, building or other work constructed by a local board shall vest in such local board. If a District Local Board has a right to construct an office building for itself, it has also a right to decorate such building and its appertenant gardens. Consequently, if the statue erected in the present case, is intended as a decoration of the District Local Board's Office and garden it appears that no legal objection can be taken to it.

Id/-

17/9

Remembrancer of Legal Affairs.

U.R. to L.S.D. & P.H.D. No. 945/A-Conf., dated
the 10th September 1952.

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Bombay Local
Boards Act, 1923.

Sec. 14.

The view taken by the Local Self Government and Public Health Department appears to be correct. The omission made, although -- inadvertantly, at the time of the final publication of the list, of as much as five sixth of the total number persons, would be a material irregularity amounting to illegality as offending against the general principles of law and vitiate the final publication under section 14 of the ^U Bombay Local Board Act, 1923. The electoral roll must therefore be again finally revised and published after including all the names that should have been included therein but for this omission (cf. R.L.A.'s opinion No. 4261, dated the 18th April 1939). As stated in R.L.A.'s opinion No. 12001, dated the 27th July 1951, the proviso to section 17 contemplates the fixing of different dates for different constituencies for the purpose of holding general election and there would be no objection to holding the general election in this particular constituency on a different date.

Id/-

28/10

Remembrancer of Legal Affairs.

V.R. to L.S.G. & P.H.D., No. 1154/A-conf., dated

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the 28th Oct. 52

Office of the R.L.A.

Bombay Local Boards
Act, 1923

Sec. 93(1)(a)

sale proceeds of
occupancy price

recovery in
respect of

The local fund cess imposed by the Mamlatdar of Tharad was intended for the benefit of the District Local Board; but under section 93(1) (a) of the Bombay Local Boards Act, 1923 the cess recovered by the Mamlatdar ~~xxx~~ cannot be paid to the District Local Board. ~~xxx~~ When the cess cannot be paid to the Board not can it be retained by Government, it will have to be refunded to the occupants. It may be that the bids offered by the occupants may have been higher if the condition of payment of the local fund ~~xxx~~ cess were not attached; but that would be no valid ground for Government to claim the cess as part of the occupancy price. Besides in a similar case Government has refunded the local fund cess to the occupant Shri Vira Jivaraj Sanghvi; and there is no reason why the same should not be done in the present case also.

14/-

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U.R. to R.D., No. 19502/A, dated the 21st November
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When both the District Local Board and the Village Panchayat have jurisdiction over the local area of the village for which the Panchayat has been constituted, both can levy the profession tax and the tax on industrial concerns in the village, although the rates may differ. If Government considers that such double taxation is unfair in its incidence, it would be open to Government to take steps under section 103 of the Bombay Local Boards Act, 1923, requiring the District Local Board to exclude from the operation of such tax the village areas in which the Panchayats have levied the tax.

Id/-

28/11

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U.P. to L.R.O. & P.H.D. No. 15521/N, dated the 29th Novr. 1952. 29/11

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Local Department.

The view taken by the Under Secretary to Government Local Self Government and Public Health Department in his note at pages 3 and 5 ante is correct.

2. Rule 33(1) of the Bombay Local Boards Election Rule 1932, lays down that any person on duty at a polling station at which he is not entitled to vote may, if he is entitled to vote at any other polling station, vote at the polling station at which ~~he~~ he is on duty on production of a certificate etc. This rule, unlike rule 37 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, does not specifically lay down the persons who are entitled by the candidate and his duties are to challenge impersonators, to require statutory questions to be put, to prevent plurality in voting etc. Any number of polling agents can be appointed and reliefs also can be appointed. He is not concerned with the management of the polling station and there is no obligation on him to be present at all times at the polling station. He cannot therefore be said to be a person on duty at the polling station for the purposes ~~of~~ ~~the~~ of rule 33. He is not therefore entitled to the concession of voting given by that rule.

18/-

22/11

Additional Secretary to Government

U.R. to L.G.C. & P.H.D. No. 19521/D, dated the 22nd Nov 1952.

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Bombay
Local
Boards
Act, 1923.

There is no general provision in the election law relating to district local boards for a re-poll under any circumstances. The circumstances in which a fresh poll was ~~made~~ advised in R.L.A.'s opinion No. 6496, dated the 20th April 1952, were altogether different, and have no bearing on the present case. In the circumstance, it would be necessary to proceed with the next stages of the election viz. counting of votes and declaration of result etc. on the due dates, and to leave the aggrieved party to have recourse to Civil Court.

Id/-
2/12

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Branch of Legal Affairs.

U.R. to L.S.G. & P.N.D. No. 20201/A dated the 2nd December 1952.

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Bombay Local Boards
Act, 1923

Section 121.

Permanent Travelling
Allowance -
Whether remuneration.

It appears that the District Local Board, Belgaum, is paying its engineer Rs. 300 as permanent travelling allowance. The question raised for the R.L.A.'s consideration is whether it would be competent for the Director of Local Authorities under section 121 of the Bombay Local Boards Act, 1923, to require the Board to reduce the permanent travelling allowance of the Engineer to Rs. 250 per month.

Under section 121 of the ⁸⁰Bombay Local Boards Act, 1923, if in the opinion of the Commissioner the remuneration assigned by the board to its officers or servants or to any particular person is ~~excessive~~ excessive, the board shall on the requirement of the Commissioner, reduce the remuneration of the said person. The word "remunerations" has not been defined in the Act. Section 119(1) speaks of salaries, fees and allowances and sub-sections (2) and (3) speak of salary of such Chief Officer or Engineer. Reference is made to remuneration in section 121. Section 123(c) refers to allowances of officers and servants while absent on leave, and clause (d) of that section relates to remuneration to be paid to persons or any such officer or servants during their absence on leave. It is, therefore, clear that the Act itself makes a distinction between salary and remuneration and remuneration seems to have been used in its extended meaning. Black's Law Dictionary defines "remuneration" as reward or recompense, salary. It is stated there also that the word "remuneration" ~~may~~ means quid pro quo. If a man gives his services, whatever consideration he gets for giving his services seems to be a remuneration for them. Consequently, if a person was in receipt of a payment or in receipt of a percentage or any kind of

payment which is not to be an actual money payment, the amount he would receive annually in respect of this would be remuneration. (Title 1 Queen's Bench Div. pp. 663-664). It is stated in Ballentine's Law Dictionary that the word "remuneration" has been held to be synonymous with earnings and to include salary, wages, compensation. (see Bussell v. Ely, T. Walker Dry Goods Co. A.J.R. 253). In the present case the travelling allowance of the Engineer, District Local Board, Belgam, is a fixed monthly payment and it does not necessarily mean an amount equal to the amount which the Engineer is required to spend for his travelling. It appears to be in the nature of compensation for travelling. In the circumstances, there appears to be no legal objection to considering the permanent travelling allowance of section 121 of the Bombay Local Boards Act and it would be competent for the Director of Local Authorities to require the District Local Board, Belgam, to reduce the permanent travelling allowance of its Engineer to Rs. 250 per month.

Id/-

22/7

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"R. to L.G. & P.U.D., No. 12134, dated the 23rd

July 1952.

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The view taken by the Local-Self Government & the Public Health Department and concurred in by the Director of Local Authorities is not correct. The distinction between a 'rule' and a 'by-law' cannot be ignored. "By-laws" can be framed by a District Local Board under section 62 which "rules" can be framed by Government under section 133 of the Bombay Local Boards Act, 1927. Under clause (c) of section 133 rules can be framed prescribing such general conditions as shall seem fit as to the manner in which the business of local boards shall be conducted. Consequently, no by-laws can be framed regulating the business of the local boards. Under rule 4 of the Rules framed by Government under section 133(c) before any contract for the supply of materials or for the execution of any work, the cost of which is estimated to exceed Rs. 2500/- is entered into by a Local Board, tenders shall be publicly invited, by advertisements in one or more local newspapers, if any, and in such other manner as the Board thinks fit, from the persons willing to enter into such contracts. Rule 131 of the Bombay Local Boards Accounts Code, 1935, also provides that in the case of original works estimated to cost more than Rs. 2500/- tenders shall be invited by advertisements in one or more local newspapers, if any, and in such other manner, as the Board thinks fit. It is, therefore, clear from these rules that tenders for the supply of materials or for the execution of works shall be invited by advertisements in one or more local newspapers. If a District Local Board wants to follow a certain procedure more elaborate than

than the one prescribed by these rules for inviting tenders, it would be open to such Board to pass a resolution to that effect and to follow it, provided such resolution is in no way inconsistent with the aforesaid rules. By-laws Nos. 1, 2, 3, and 4 of the By-laws framed by the District Local Board, Kolhapur, provide for calling for tenders and they do not appear to be inconsistent with any of the aforesaid rules. Consequently, instead of these by-laws, the District Local Board, Kolhapur, should pass resolutions for the matters contained in these by-laws after deleting them.

Under rule 1 of the Rules framed by Government under clause (g) of section 133 a District Local Board is competent to delegate to its president power to appoint any officer or servant on a monthly salary not exceeding Rs. 100/-. Under rule 2(A), the District Local Board can delegate to its President or the Chief Officer or Engineer the power of punishing or dismissing any officer or servant receiving a monthly salary not exceeding Rs. 100/-. Rule 12 of the rules framed under clause (h) of section 133 provides that no permanent appointment to the post of Chief Officer, Engineer, or Health Officer shall be made until applications have been called for by advertisements in such newspapers as the President may select for the purpose and until at least 2 months have elapsed from the date of the first of such advertisements. Rule 10 provides for the qualifications. As regards the clerical and other appointments, rule (21) provides that the qualification would be the same as those for eligibility for corresponding appointments in Government service and in filling up the appointments due regard shall be had to the

-5-

necessity of securing proper admixture of the of the different castes of the district. No provision appears to have been made in the rules under clause (h) of section 133 providing that appointments of the servants of the Board higher than the rank of clerks shall be made after calling for application. By-laws 5 and 6 of the By-laws framed by the District Local Board, Kolhapur, deal with the appointments of servants higher than the rank of clerks, except in the posts of Chief Officer, Engineer, and Health Officer. These appear to be consistent with the aforesaid rules; and resolutions in terms of these by-laws may be passed by the District Local Board as supplementing the aforesaid rules and these by-laws do not.

Id/-

11/11

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U.R. to L.S.O.A.P.J.D. Co. 18004/A dated the November
1952.

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Bombay Local
Board Act,
1923.

Sec.123.

No rules or regulations can be made retrospectively unless the statute, whereunder they are made, so authorises. Section 122 of the Bombay Local Boards Act, 1923, whereunder regulation 17(1) is proposed to be made by the District Local Board, Kolaba, does not provide for making any regulation retrospectively. Consequently the proposal to make regulation 17(1) retrospectively would not be legally feasible. Whether or not the District Local Board servants are entitled to gratuity should be determined on the provisions existing when the Provident Fund Rules came into force.

Id/-

12/12

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No.21029/A, dated the 13th December 1952.

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It appears that under Item (9) of Rule 4 of the Rules regulating levy of tax on Industrial Concerns, Bricks, and Lime Kilns framed by the District Local Board, Thana, tax on all other factories above 5 B.T.P. at the rate of Rs. 5/- per B.T.P. per annum subject to a maximum of Rs. 50 can be levied. The question raised for the R.L.A.'s consideration is whether 'factories' includes "flour mills".

2. "Factories" has not been defined in those rules. The Factory Act has not been referred to in the Rules framed by the District Local Board, Thana. In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. Consequently, the definition of 'Factory' given in the Factories Act cannot be imported into the Rules framed by the District Local Board. The word "Factory" in the Rules will have to be given its ordinary meaning. "A factory means every place in which any manual labour is exercised by way of trade or for purposes of gain in or incidental to the making of any article, or part of any article or altering, repairing, ornamenting or finishing it, or otherwise adapting it, for sale." If any machinery moved or worked by steam, water or any other mechanical power is used in such manufacture, or in aid of such manual labour, the place is a 'factory'. If no machinery moved or worked by any mechanical power is used, then the place is, generally speaking, 'workshop'. (See Iyer's Law Lexicon, p. 426). There would, therefore, be no legal objection to holding that 'flour mills' can be construed as factories for purposes of levying tax under the Rules framed by the District Board, Thana.

Id/-
12/12

Remembrancer of Legal Affairs.

U.R. to L.S.G.S.P.F.D.No.26823/A, dated 13th December 1952.

R.L.No. 29856 dated 11-12-52.

2. It appears one Shri B.P. Bhatt, Superintendent of Revabai Bhaishankar Solicitor, Hindu Dharamshala—a trust which is managed by the D.L.B., Ahmedabad, was stabbed to death on 14th April 1949 while he was on duty. Thereafter the Board by its Resolution dated the 28th January 1950 decided to grant a family pension at the rate of Rs. 25/- per month to the ~~successor~~ descendants of the deceased for a period of fifteen years beginning with 15th April 1949 and approached Govt. for sanction to the proposal. On a reference to the R.L.A. it was pointed out that since the pension or gratuity was to be paid to the widow of the deceased — Shri Bhatt, out of the Revabai Bhaishankar — Solicitor Hindu Dharamshala Fund, such payment would be valid only if the Rules and Regulations framed by the D.L.B., Ahmedabad under the trust-deed for the control and management of the trust property permit. (Cf. R.L.A.'s opinion No. 10975, dated the 3rd August 1950.) On a further reference to ~~the~~ the R.L.A. on the point whether in absence of any provision in the rules framed by the Board under section 123 (f) of the Bombay Local Boards Act, 1923, for ~~payment~~ payment of compensation to the relatives of the deceased employees of the board, it would be competent to frame rules with retrospective effect to cover this case, the R.L.A. in his opinion No. 15499, dated the 6th Nov. 1950 observed that no rule with retrospective effect can be framed under that provision. The Board proposal was therefore rejected in G.L. L.S.G. & P.J.D. dated the 11th January 1951. On a further representation by the

Board the question has now been reopened. In
L.S.G. & P.N.D. office not at pp.59-60 ante
a reference has been made to R.L.A's opinion No.
6373, dated the 25th April 1952 expressed in the
matter of late Chief Officer of Thana, D.L.B.,
and the U.S. L.S.G. & P.N.D. has observed that
as was done in that case the D.L.B. Ahmedabad
may be asked to frame regulations determining
the conditions on which compassionate allowance ~~may~~
may be paid to the ~~widow~~ widow of the deceased to
cover the present case. The R.L.A. is requested
to advise.

Office of the R.L.A.

Seen and returned.

R.L.A.'s opinion
No. 10275, dated
3-8-1950.

The view taken by the Under Secretary, Local
Self Government and Public Health Department is correct.
After the regulations are made by the District Local
Board, Ahmedabad, with the approval of Government, it
would be open to the widow/ of Shri H.P. Bhatt to
apply for the grant of allowance.

Id/-

17/12

Remembrancer of Legal Affairs.

W.R. to L.S.G. & P.H.D. No. 21320/A dated the 18th

December 1952.

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Under section 50(b) of the Bombay Local Boards Act, 1923, it is one of the obligatory duties of a District Local Board to make provision, so far as the local funds at its disposal will allow, to construct and repair hospitals, dispensaries, etc. Consequently it would be competent for the District Local Board, if its funds allow, to take over the Ayurvedic dispensaries in question and maintain them. But there is no provision in the Act compelling the District Local Board to take over these dispensaries.

2. From the rules of medical aid in rural areas framed by the Bombay Durbar, it appears that these dispensaries were maintained out of the local fund cess collected in the State and the grant made by the State. Since there was no local board in the State before its merger, it appears that the present District Local Board cannot be considered to be a successor liable to take over the liability of maintaining these dispensaries. It is true that an amount of Rs. 1,44,581-4-8, the balance of the local fund cess of the ex-Bombay State, has been transferred to the District Local Board, Kaira, after merger of that State and the District Local Board, Kaira, had no right to claim that amount. However, the liability to maintain the dispensaries out of that fund cannot be deemed to have been transferred along with the fund to the District Local Board, Kaira. In the circumstances, it appears that, if the District Local Board does not want to take over these dispensaries and maintain them, it may be asked to refund the amount to Government.

gnd.
22.8.56.
4 Copies,

Id/-
18/11

Memorandum of Legal Affairs

U. R. F. L. S. C. and P. H. D. No. 19300/A dated the 19th November 1952

L.D.R.I.No.30727 dt.10.12.52.

Submitted with reference to L.S.G. & P.N.D. note dt. 15th Deco. 1952.

The L.S.G. & P.N.D. does not state on what specific point it has referred the papers to this Deptt. The question which that Deptt. had previously referred was the question regarding the interpretation of the term "all other papers relating to an election" which are required to be destroyed ~~with~~ according to rule 45 of the Bombay Local Boards Election Rules, 1933. That case has already been returned by this Deptt. to L.S.G.&P.N.D. with this Deptt. N.N. No. 21437/A dt. 10.12.52. From these papers it appears that the Collector, Mehsana has enquired whether manuscript copies of the electoral rolls preliminary published and ~~a~~ manuscript copies of Ad'enda and corrigenda to voters' list prepared for N.I. . . election together with printed copies finally published and no longer required can be destroyed. It appears that L.S.G. & P.N.D. first intended to refer the matter to P & C.N. for obtaining information on the point, Under M Secy. L.S.G.&P.N.D. desired to refer the question to L.D. and it appears it has accordingly referred them.

Office of the R.L.A.

There is no objection to destroying manuscript copies of lists (preliminarily published) and manuscript copies of Addenda and Corrigenda to voters' lists and printed proof copies finally published but not lists falling within section 14 of the Bombay Local Boards Act, 1923.

Id/-
26/12

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.V.D. Co. 21013-A, dated the 27th
December 1953.

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